

The Administrative Law Judge found that claimant, at best, sustained a temporary aggravation of a pre-existing condition and denied claimant's request for permanent partial disability benefits. Claimant requested review of that finding and raised the following issues for determination:

- (1) Whether claimant met with personal injury by accident arising out of and in the course of her employment with respondent;
- (2) Average weekly wage; and,
- (3) Nature and extent of disability.

As indicated above, the parties have stipulated as to the amount of claimant's average weekly wage and that is no longer an issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, this proceeding should be remanded to the Administrative Law Judge to determine the amount of permanent partial disability benefits that claimant is entitled to receive as a result of her compensable, work-related accident.

(1) Based upon the testimony of claimant and the medical experts, the Appeals Board finds claimant has sustained permanent injury and impairment as a result of an accidental injury that occurred while claimant was working for the respondent on March 29, 1992. On that date, claimant injured her low back when she was lifting and stacking twenty-eight (28) pound reels onto a pallet.

For this particular injury, C. Reiff Brown, M.D., a board-certified orthopedic surgeon, treated claimant from April 1992 through August 1992. Before this injury, Dr. Brown had treated claimant in 1990 for a broken or dislocated foot. Also, the doctor had examined claimant in January 1991 to evaluate the extent of injuries she had received while working for another employer in 1988. Dr. Brown believes claimant has degenerative disc disease in her lumbosacral spine and that the work-related accident in March 1992 caused a small herniation of the disc between the fourth and fifth lumbar vertebrae. In making these conclusions, Dr. Brown had available for review and comparison diagnostic studies from both before and after the March 1992 accident.

Edward J. Prostic, M.D., another board-certified orthopedic surgeon, evaluated claimant on January 14, 1994. Dr. Prostic believes claimant has degenerative disc disease and testified that claimant sustained a work-related accident in March 1992 and sustained permanent impairment as a result of that accident.

Due to the finding that claimant has met with permanent injury as a result of the work-related accident on March 29, 1992, this case should be remanded to the Administrative Law Judge to determine the amount of permanent partial disability benefits the claimant is entitled to receive under K.S.A. 1991 Supp. 44-510e. Remand is proper because without it the parties would not have an opportunity for a de novo review of the findings pertaining to permanent partial disability. Although the Appeals Board does have de novo review, we can only review findings of the Administrative Law Judge and, in this instance, there are no findings of permanent partial disability.

(2) Because of the parties' stipulation at oral argument, average weekly wage is no longer an issue. The parties have stipulated for purposes of this proceeding that claimant's average weekly wage is \$470. Therefore, this amount should be utilized by the Administrative Law Judge for purposes of award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge George R. Robertson, dated May 24, 1995, should be, and hereby is, reversed; that claimant did meet with permanent injury and impairment as a result of her work-related accident on March 29, 1992; and, that this case is remanded to the Administrative Law Judge to determine the amount of permanent partial disability benefits that claimant is entitled to receive under K.S.A. 1991 Supp. 44-510e. The Appeals Board does not retain jurisdiction over this proceeding.

IT IS SO ORDERED.

Dated this ____ day of September 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John M. Russell, Great Bend, KS
Jerry M. Ward, Great Bend, KS
Kent A. Roth, Great Bend, KS
Administrative Law Judge, Salina, KS
Philip S. Harness, Director